

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

|                                         |   |                               |
|-----------------------------------------|---|-------------------------------|
| <b>FIRST COMMAND FINANCIAL</b>          | § |                               |
| <b>SERVICES, INC. and FIRST COMMAND</b> | § |                               |
| <b>FINANCIAL PLANNING, INC.,</b>        | § |                               |
|                                         | § |                               |
| <b>v.</b>                               | § | <b>CIVIL ACTION NO. _____</b> |
|                                         | § |                               |
| <b>DAVINCI FINANCIAL DESIGNS, INC.</b>  | § |                               |

**NOTICE OF REMOVAL**

Defendant DaVinci Financial Designs, Inc. (“Da Vinci”) files this Notice of Removal pursuant to 28 U.S.C. Sections 1441 and 1446, as follows:

**Commencement and Service**

1. On November 6, 2013, Plaintiffs First Command Financial Services, Inc. and First Command Planning, Inc. (collectively, “First Command”) commenced this action by filing Plaintiffs' Notice of Arbitration Award and Application for Partial Confirmation of Arbitration Award (“Application”) in the 48th Judicial District Court of Tarrant County, Texas, located at Tarrant County Courthouse, 401 W. Belknap, Fort Worth, TX 76196-0221. The case is styled Cause No. 048-269069-13; *First Command Financial Services, Inc. and First Command Financial Planning, Inc. v. DaVinci Financial Designs, LLC*; In the 48th District Court of Tarrant County, Texas.<sup>1</sup>

2. DaVinci has been served.

3. DaVinci has not filed an answer in state court.

4. This Notice of Removal is filed within thirty days of the receipt of service of process and is timely filed under 28 U.S.C. § 1446(b). This Notice of Removal is also filed

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<sup>1</sup> See Exhibit A, First Command’s Application.

within one year of the commencement of this action, and is thus timely pursuant to 28 U.S.C. § 1446(b).

### **Grounds for Removal**

5. DaVinci is entitled to remove the state court action to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because this action is a civil action involving an amount in controversy exceeding \$75,000.00 between parties with diverse citizenship.

### **Diversity of Citizenship**

6. There is complete diversity of citizenship between Plaintiffs and Defendant.

7. First Command Financial Services, Inc. is a corporation organized under the laws of the State of Texas, and has its principal place of business in Fort Worth, Texas. First Command Financial Planning, Inc. is a wholly-owned subsidiary of First Command Financial Services, Inc. organized under the laws of the State of Texas and has its principal place of business in Fort Worth, Texas. Thus, both Plaintiffs are citizens of Texas.<sup>2</sup>

8. DaVinci is now, and was at the time this action was filed, a limited liability company organized under the laws of the State of South Carolina and has its principal place of business in Columbia, South Carolina, and is therefore a citizen of the State of South Carolina for purposes of diversity jurisdiction.<sup>3</sup>

9. Further, the amount in controversy exceeds \$75,000. Federal courts may determine that removal is proper if it is facially apparent from the petition that the claims are likely above \$75,000. *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995). If it is not facially apparent from the petition that the amount in controversy is over \$75,000, then the removing party may provide summary judgment-type evidence demonstrating that the amount in

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<sup>2</sup> See Exhibit A, Application, ¶¶ 1, 2.

<sup>3</sup> See Exhibit B, Memorandum, p. 2.

controversy is more likely than not over \$75,000. *Id.* In actions to confirm an arbitration award, the size of the award sought to be confirmed determines whether the amount in controversy exceeds \$75,000. *See, e.g., Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1472-73 (11th Cir. 1997), *cert. denied*, 525 U.S. 841 (1998).<sup>4</sup>

10. First Command seeks to partially confirm its arbitration award against DaVinci for \$200,000.<sup>5</sup> Accordingly, the amount in controversy requirement is easily satisfied.

### **Notice**

11. Defendant will give notice of the filing of this notice of removal to all parties of record pursuant to 28 U.S.C. § 1446(d). Defendant will also file with the clerk of the state court, and will serve upon First Command's counsel, a notice of the filing of this notice of removal.

### **Jury Demand**

12. First Command did not file a jury demand in the state court action.

### **State Court Pleadings**

13. A copy of First Command's state court application is attached to this Notice of Removal. *See* Exhibit A.

### **Exhibits to Notice of Removal**

14. The following documents are attached to this Notice as corresponding lettered exhibits:

- A. First Command's Notice of Arbitration Award and Application for Partial Confirmation of Arbitration Award, including certificate of process –

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<sup>4</sup> Currently, the federal circuit courts are split on the method for determining amount in controversy in a case to confirm an arbitration award. *See Karsner v. Lothian*, 532 F.3d 876, 882 (D.C. Cir. 2008). The Fifth Circuit has yet to take a position on this question. However, Texas federal district courts have concluded that the size of the award sought to be confirmed determines amount in controversy. *See Curbelo v. Hita*, No. EP-09-CV-133-PRM, 2009 WL 2191084, at \*5 (W.D. Tex. July 22, 2009); *Mannesmann Dematic Corp. v. Phillips, Getschow Co.*, No. 3:00-CV-2034-G, 2004 WL 2512742, at \*1 (N.D. Tex. Nov. 5, 2004).

<sup>5</sup> *See* Exhibit C, Arbitration Award, p.21.

*Exhibit A*

- B. Memorandum in Support of Petition and Application to Confirm Arbitration Award in *James S. Agostini, et al. v. First Command Financial Services, Inc. and First Command Financial Planning, Inc.*, 3:13-CV-0302026-MBS, United States District Court for the District of South Carolina Columbia Division – *Exhibit B*
- C. Arbitration Award – *Exhibit C*
- D. Petition and Application to Confirm Arbitration Award filed in the United States District Court for the District of South Carolina (Columbia Division) – *Exhibit D*
- E. A list of all attorneys of record, including addresses, telephone numbers and parties represented – *Exhibit F*

**Prayer**

WHEREFORE, Defendant DaVinci Financial Designs, LLC, pursuant to the statutes cited herein and in conformity with the requirements set forth in 28 U.S.C. § 1446, removes this action from the 48th Judicial District Court of Tarrant County, Texas to this Court.

Respectfully submitted,

By: /s/ Craig T. Enoch

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**ATTORNEYS FOR DEFENDANT**  
**DaVinci Financial Designs, LLC**

**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that a true and correct copy of this document has been sent electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) to the party listed below on November 18, 2013.

*Counsel for Plaintiffs*

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/s/ Craig T. Enoch  
Craig T. Enoch